

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE:

NEW ENGLAND COMPOUNDING PHARMACY, INC. ) Multi-District Litigation  
PRODUCTS LIABILITY LITIGATION, ) Case No. 1:13-md-2419-RWZ  
  )

**STATUS REPORT OF TORT TRUSTEE**

Lynne F. Riley, Tort Trustee<sup>1</sup> under the Tort Trust dated June 4, 2015 created pursuant to the *Third Amended Joint Chapter 11 Plan of New England Compounding, Inc.* confirmed by the United States Bankruptcy Court for the District of Massachusetts on May 20, 2015, hereby submits a report on the status of claims processing, lien clearance and payments in the NECC National Settlement annexed hereto as Exhibit A.

Respectfully Submitted,

LYNNE F. RILEY, TORT TRUSTEE,

By her attorneys,

/s/ Timothy J. Durken

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Michael J. Fencer (BBO No. 648288)  
Timothy J. Durken (BBO No. 666720)  
JAGER SMITH P.C.  
One Financial Center  
Boston, Massachusetts 02111  
Telephone.: 617-951-0500  
Facsimile: 617-951-2414  
Email: mfencer@jagersmith.com  
tdurken@jagersmith.com

Dated: November 1, 2016

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<sup>1</sup> Capitalized terms used, but not otherwise defined herein shall have the meanings ascribed to those terms in the *Third Amended Joint Chapter 11 Plan of New England Compounding, Inc.*

**CERTIFICATE OF SERVICE**

I, Timothy J. Durken, hereby certify that on the date set forth above I caused true copies of the foregoing document to be served through the Court's CM/ECF system upon all registered electronic filers appearing in this case.

/s/ Timothy J. Durken

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Timothy J. Durken

## **Exhibit A**

### **STATUS OF CLAIMS PROCESSING, LIEN CLEARANCE AND PAYMENTS IN THE NECC NATIONAL SETTLEMENT**

#### **A. Adjudication of Claims by Epiq.**

The deadline for victims to submit claims for compensation from the National Settlement Fund was October 2, 2015. A total of 2,338 claims have been filed with Epiq, the National Settlement Administrator. As of mid-March 2016, 1,199 claims were allowed in full by the National Settlement Administrator (“1,199 Approved Claims List”). Between March 18, 2016 and August 31, 2016, another 780 claims for compensation were fully or partially approved by the National Settlement Administrator (“780 Approved Claims List”). Approximately 50 of these claims are undergoing further review by the Settlement Administrator. In total, 372 claims have been fully and finally denied by the National Settlement Administrator. In addition, 72 claimants have filed appeals of their final determination with Judge Neiman, the Court-appointed Appeals Administrator. The Settlement Administrator has been transmitting the appeals packages for these claimants to Judge Nieman and there is not yet an estimate of when these appeals will be decided.

#### **B. Tort Trustee Has Reached Agreement with Medicare and Certain Private Third Party Payors**

As required under the NECC Bankruptcy Plan and the Tort Trust Agreement, the Tort Trustee engaged in negotiations with CMS to resolve CMS’ claims for medical expenses involving all NECC claimants. In August 2016, an agreement was finalized with CMS to establish a voluntary program to resolve all CMS’ claims. Hundreds of liens have also been asserted by large private health insurers (e.g., Blue Cross Blue Shield of Tennessee) and an agreement has been finalized with their representatives to establish a lien resolution program to resolve those liens as well.

#### **C. The Tort Trustee’s Efforts to Clear Liens**

##### **a. The 1,999 Approved Claims List**

These 1,199 claimants were notified by the National Settlement Administrator that their claims were allowed and that they would receive an initial payment from the Tort Trust. As

required under federal law, the Tort Trustee submitted the required information on these proposed payments to the Center for Medicare Services (“CMS”) who promptly returned Medicare eligibility information on these claimants.

Information on the 1,199 claimants whose claims were approved in full has also been provided to the various state Medicaid agencies through a third party, the Garretson Resolution Group (“Garretson”), to determine if those agencies have claims for medical expenses involving these claimants. Medicaid eligibility results have now been received for over 90% of these 1,199 claimants, leaving approximately 150 claimants whose Medicaid agencies in various states have not yet reported back.

Substantial progress has been made on lien clearance for these claimants and disbursement of initial payments from the National Settlement Fund began in August 2016. Lien letters with accompanying certifications and opt-out forms have been sent to approximately 750 of these claimants. The vast majority of the remainder of this first group of 1,199 claimants will receive lien letter packages required for lien clearance over the next few weeks. As claimants return certifications and liens are thereby cleared, Medicare must then provide its final approval for payment within 5 business days. To date Medicare has typically provided its final approval within two business days. Once Medicare sends its final approval to the Tort Trustee, checks are being issued within 24 hours. To date, approximately 275 checks have been sent to this first group of 1,199 claimants, including some checks for claimants under the three clinic settlements, with total funds disbursed to claimants by the Tort Trustee of \$5,439,512.

#### **b. The 780 Approved Claims List**

Between March 2016 and September 2016, another 780 claims for compensation were approved by the National Settlement Administrator. The lien clearance process on the other 780 claims is underway. These claims have already been run through Medicare, and Medicare has returned all eligibility information. On September 15, 2016 the claimant information for this list of 780 claimants was provided to the various state Medicaid agencies. The Tort Trustee has been informed by Garretson that the bulk of Medicaid data regarding these 780 claims should arrive by November 15<sup>th</sup>, at which time lien letter packages can begin to go out for this second group of claimants, with initial payments from the National Settlement Fund to begin issuing to this second group of approved claimants in December 2016.

In anticipation that there may be a delay by various state Medicaid agencies in returning the required data and potentially jeopardizing the Tort Trustee's ability to make initial payments to most approved claimants by year's end, the Tort Trustee has asked Garretson to inform the Medicaid agencies that she expects the data to be returned no later than November 15, 2016 and that if such data is not returned by then it will be assumed that the agency has no outstanding liens. The Tort Trustee has also asked that the agencies be informed that if they do not provide the data by November 15, 2016, the Tort Trustee may seek guidance from the Court in the form of a show cause order to these agencies to explain the delay to the Court.

#### **D. Summary Chart**

For the Court's convenience, the pertinent numbers set forth above are summarized in the chart below:

<b>Adjudication of Claims</b>		
Total Claims Filed:	2,338	Done
Total Approved Claims to Date	1,979	Done
Total Claims Denied to Date	372	Done
Claims Still Under Adjudication (part of the 1979 claims which have been partially allowed)	50	Estimated completion by 11/30/16
Final Claim Determinations on Appeal with Appeal Administrator	72	Estimated completion date unknown
<b>Lien Clearance and Payments to Claimants on the 1,199 Approved Claims List</b>		
Number of Claimants Sent Letter to Clear Liens and/or Obtain Certification	750	Done
Number of Lien Letters to be sent	449	Estimated completion by 11/30/16
Number of claimants mailed checks to date	275	Done

<b>Lien Clearance and Payments to Claimants on the 780 Approved Claims List</b>		
Number of claimants for whom the Tort Trustee has received Medicare eligibility information	780	Done
Number of claimants for whom the Tort Trustee has received Medicaid eligibility information	255	Estimated completion by 11/30/16